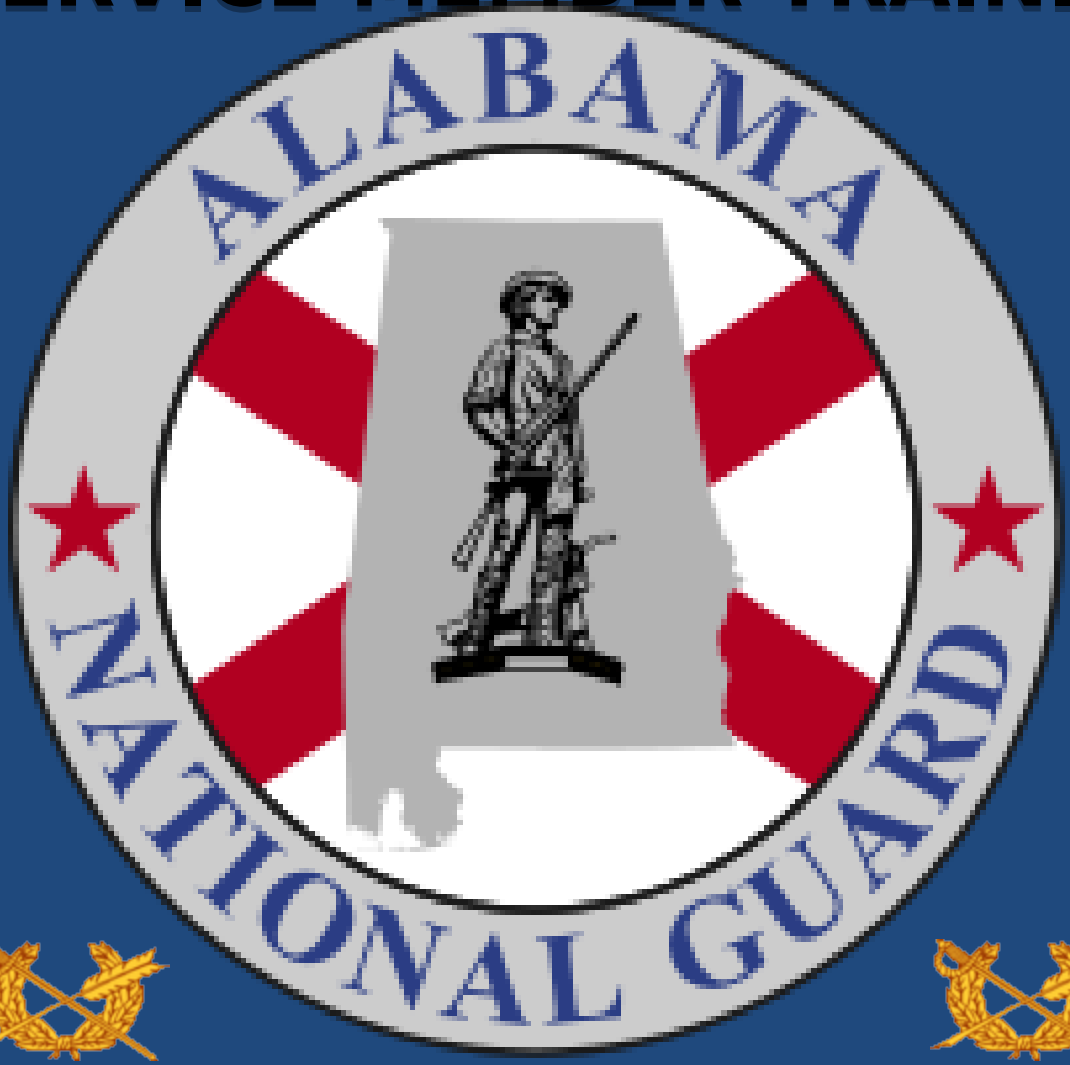
ALABAMA CODE OF MILITARY JUSTICE
SERVICE MEMBER TRAINING



ALNG STAFF JUDGE ADVOCATE
COL W. TERRY TRAVIS

ALNG MILITARY JUDGE
COL TERRY MOORER

Agenda

- Legal Sources of the ACMJ
- Similarities between ACMJ & UCMJ
  - Purpose of the ACMJ
- ACMJ
  - ACMJ Components Chart
  - Jurisdiction of the ACMJ
  - Jurisdiction and Applicability
  - Crimes Covered in the ACMJ
  - Suspects Rights
  - Key Personnel in the Military Justice System
  - Commanders Responsibilities
  - Disposition of Offense Commanders Options
- Administrative Actions
- Non-Judicial Punishment (Article 15)
- Courts-Martial
- Appeals

Legal Sources of Alabama Military Justice

- Alabama Constitution & US Constitution
- Modeled after Uniform Code of Military Justice (UCMJ) and Manual for Courts-Martial 2012 (M.C.M.)
- Army Regulation, Air Force Instruction, Army & Air National Guard Regulation, and Local Policies
- The ACMJ is also supported by its own MCM and State Military Department Regulation (SMDR) 27-10

ACMJ is Similar to the UCMJ

Alabama Code		Uniform Code
Administrative, Non-Judicial Punishment (summarized/formal), Courts-Martial (GCM, SPCM, SCM)	same	
Military and misdemean offenses	same	
SPCM not authorized adjudge Dishonorable Discharge		SPCM not authorized adjudge Bad Conduct Discharge or Dishonorable Discharge
Appellate process for NJP to next higher level comma	same	

Purpose of ACMJ

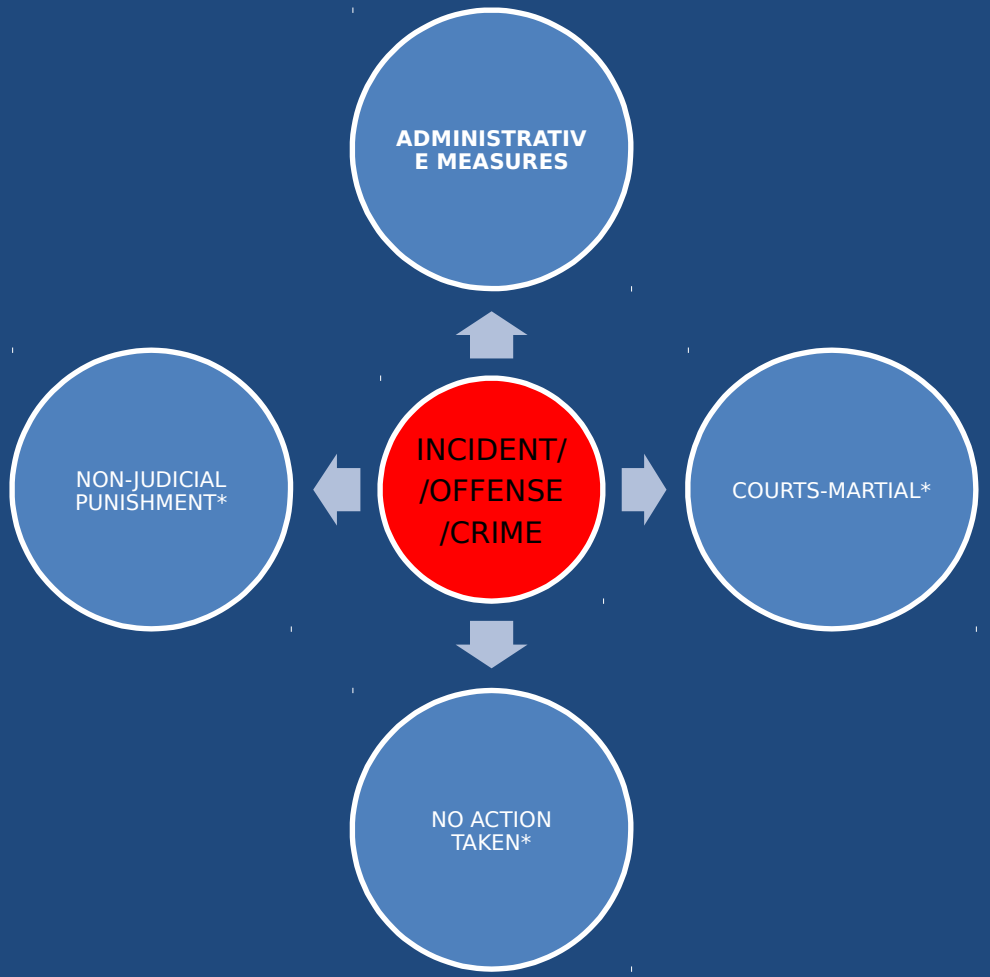
- Promote Justice
- Help Maintain Good Order and Discipline in the Armed Forces
- Promote Efficiency and Effectiveness in the Military
- Strengt

Alabama Code of Military Justice

ACMJ

ACMJ Components

LOCAL LAW ENFORCEMENT AGENCY*



CM APPEALS
CM Military Review Panel

Jurisdiction of the ACMJ

Over the Person:

- All ALNG members,
- At all times and all places ***except when in*** a federal Title 10 Status

Over the Offense:

- Title 32 Status or State Active Duty (SAD)
- Clear & Convincing Nexus b/t offense (military or non-military) and efficient functioning of the state military force
- Concurrent Jurisdiction: Civilian court has primary jurisdiction for Courts-martial

Jurisdiction and Applicability

- **Jurisdiction after Civilian Convictions**
  (See SMDR 27-10, Chap. 4)
  - May, but ordinarily will not, be tried by court-martial or punished under Art. 15, for the same act.
  - For instance, a soldier convicted of DUI by a civilian court won't generally receive an Art. 15 for DUI.
    - The commander may impose punishment for other actions which arise from the DUI, (i.e. dereliction of duty, fraternization, and any offense that is unique to the military and not considered by the civilian court).

Crimes Covered in the ACMJ

Common Law Crimes

Misdemeanor Offenses:

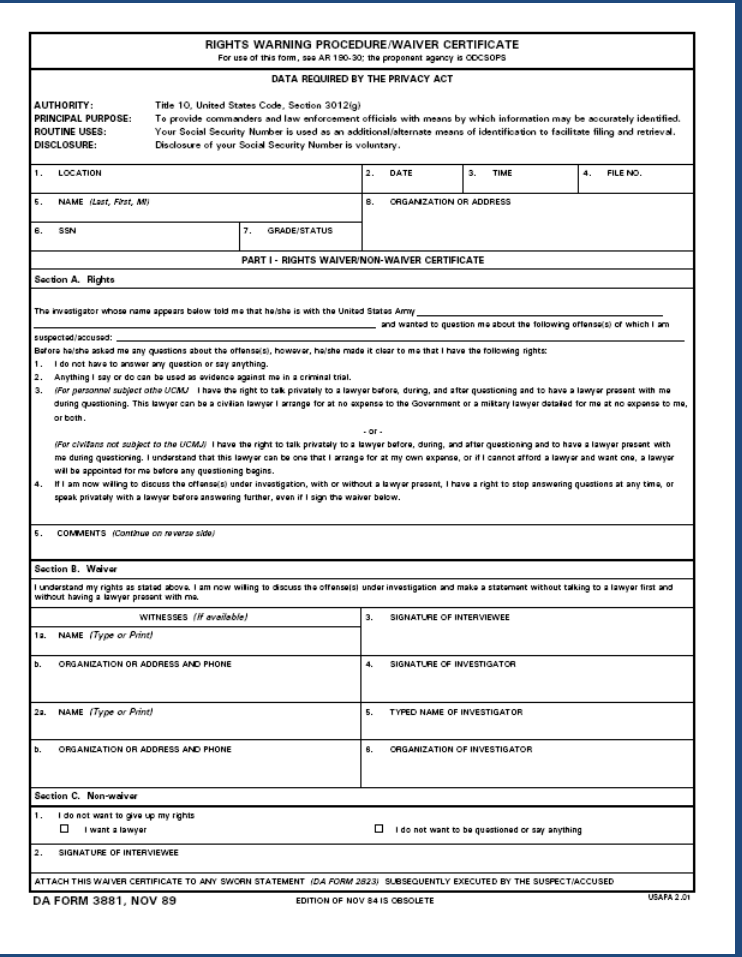
- Forgery
- Housebreaking
- Assault

Military Crimes

- Disrespect
- Disobedience
- AWOL
- Conduct Unbecoming an Officer
- Conduct Prejudicial to Good Order and Discipline

Suspects Rights

- **Article 31 (b), ACMJ:**
  - To be informed of the nature of the suspected offense
  - To remain silent
  - To be informed that any statement you make can be used against you



RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE
For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION	2. DATE	3. TIME	4. FILE NO.
5. NAME (Last, First, MI)	8. ORGANIZATION OR ADDRESS		
6. SSN / 7. GRADE/STATUS			

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army _____ and wanted to question me about the following offense(s) of which I am suspected/accused: _____

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any question or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. *(For personnel subject otha UCMJ)* I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS *(Continue on reverse side)*

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES *(If available)*	3. SIGNATURE OF INTERVIEWEE
1a. NAME *(Type or Print)*	
b. ORGANIZATION OR ADDRESS AND PHONE	4. SIGNATURE OF INVESTIGATOR
2a. NAME *(Type or Print)*	5. TYPED NAME OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR

Section C. Non-waiver

1. I do not want to give up my rights
   ☐ I want a lawyer ☐ I do not want to be questioned or say anything
2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT *(DA FORM 2823)* SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DA FORM 3881, NOV 89 EDITION OF NOV 84 IS OBSOLETE USAFA 2.01

Key Personnel in the Military Justice System

- Commander
- Staff Judge Advocate
- Trial Counsel
- Defense Counsel
- Military Judge
- Panel Members (Jury)
- Paralegal Specialist

Commander's Responsibilities

- **Maintain good order and discipline!!!**
- Investigate reported offenses
- Enforce the Law
- Protect Soldiers' Rights
- Determine Disposition of Case

Disposition of Offenses Commander's Options

- Take No Action (after investigating)
- Take Administrative Actions, and/or
- Impose Nonjudicial Punishment - Article 15
- Courts-Martial

Alabama Code of Military Justice

Administrative Actions

Administrative Action

Army Admin. Actions

- Counseling (AR 600-20)/ (A
- Corrective Training (AR 600-20)
- Administrative Reprimands (AR 600-37)
- Bar to Reenlistment (PPOM 09-206)
- FLAG (AR 600-8-2)
- MOS Reclassification (AR 600-200)
- Revoke Security Clearance (AR 380-67)
- Relief from Duties
- Adverse NCOER/OER
- Removal from Special Status
- Rehabilitative Transfer
- Administrative Reductions (AR 600-8-19)
- Administrative Separations (AR 135-175, 135-178)

Air Force Admin. Actions

- Letters of Counseling, Admonition, Reprimand (AFI 36-2907)
- Demotion (ANGI 36-2503)
- Administrative Separation (AFI 36-3206 & 36-3208)
- Revocation of Security Clearance (AFI 31-501)
- Bar to Reenlisting (ANGI 36-2002, AFI 36-2606)

Counseling Soldier's

- Key to all administrative actions:
  - Soldier must understand commander's expectations for future conduct.
  - Oral counseling is not enough – Creates no record.
  - Put it in writing and document with specificity
    - DA Form 4856 - Include requirements of AR 135-178
    - Letter of Counseling (applicable to **ANG**)

Corrective Training

A.K.A.- ***Remedial*** Training

- Training or instruction must be directly related to the deficiency observed and oriented to correct that particular deficiency
  - Remedial PT
  - Bi-hourly check-in for FTRs
- Training, NOT Punishment
- Must not be excessively humiliating or degrading

Administrative Reprimand (AR 600-37/AFI 36-2907)

- Officially documents misconduct or poor performance in official files
  - Formal Procedures (Soldier may Rebut in Writing)
- Filing Options
  - Local File
  - OMPF (General Officer directed for **ARNG**); UIF (generally as a policy matter should not be filed here for **ANG**).

Army Bar to Reenlistment

- The Army desires to retain only those Soldiers of high moral character, competence, and demonstrated adaptability (PPOM 09-206).

- Initiation of proceeding required for:
  - Failure to make satisfactory progress in Army Weight Control Program.
  - 2 Consecutive APFT failures.
  - Removal for Cause from NCOES Courses.

Air Force Barring Reenlistment

- “Continued retention in the ANG is a command prerogative and not an inherent right of any individual." "No individual will be extended without the concurrence of his/her commander.“
  - Command discretion &
  - Not required to specify reasons for decision
- 14 Ineligibility Factors (waiver not permitted)

Administrative Separations

- **Soldier's Rights:**
  - Notice and Opportunity to Respond
  - Attorney (Consultation / Board Representation)
  - Hearing (Separation Board) if:
    - > 6 years of service
    - Other Than Honorable Discharge recommended

- **Characterization of Service (Options):**
  - Honorable (No misconduct; Entitled to all benefits)
  - General (Minor misconduct; Entitled to most benefits)
  - Other than Honorable (Requires Board)
    - More serious misconduct; Forfeits most benefits

- **Standard of Proof:**
  - "Greater weight of the evidence"
  - Preponderance of the evidence (51%)

Types of Involuntary Separations

- Convenience of the Government
  - Parenthood
  - Personality Disorder
  - Other designated physical or mental condition
- Defective/Fraudulent Entry
- Alcohol/Drug Abuse Rehab. Failure
- Unsatisfactory Performance
- **Misconduct*****
  - Minor Disciplinary Infractions
  - Pattern of Misconduct
  - Serious Misconduct
- Failure to Meet Body Fat Standards

Punitive Options

- Nonjudicial Punishment (Article 15)
- Summary Courts-Martia
- Special Courts-Martial
- General Courts-Martial

Procedural Timeline

CRIME IS COMMITTED OR SUSPECTED

↓

COMMANDER ORDERS AN INVESTIGATION (IF NEEDED) EXISTING VERIFIED INFORMATION MAY BE ENOUGH

(Commander makes determination to use Administrative Actions or **Non-judicial punishment** or Courts-Martial or Not to take Action)

Only when CDR decides to go w/ CM → (Any Action may be combined with Administrative Actions)

↓

CHARGES ARE PREFERRED

↓

CONVENING AUTHORITY ORDERS AN ARTICLE 32 INVESTIGATION

↓

ARTICLE 32 IS CONVENED

↓

ARTICLE 32 REPORT SENT CONVENING AUTHORITY

↓

CONVENING AUTHORITY REFERS CHARGES FOR A COURT MARTIAL

↓

PRETRIAL

↓

COURT MARTIAL

↓

SENTENCING

Alabama Code of Military Justice

Non-Judicial Punishment

Non-Judicial Punishment (NJP) Article 15

- Non-judicial punishment is proper in all cases involving *minor* offenses when
  - administrative and leadership measures (nonpunitive) are inadequate or inappropriate. (See SMDR 27-10, para. 3-2)

NJP (Article 15)

Any ***commanding officer*** may impose disciplinary punishments for ***minor offenses*** without the intervention of a court-martial…”

- Article 15 Purpose and Function
- Who may impose an Article 15
- No Absolute right to demand trial by courts-martial

NJP Authorities

WHO CAN IMPOSE DISCIPLINARY ACTIONS:

- Any Commanding officer
  - Governor, TAG, GO of flag rank in command
  - Commissioned or warrant officer in command (AMCM 3-5(a))
- No Absolute Right to Turn Down:

Soldier's Rights

- **Formal and Summarized**
  - Remain Silent
  - Examine Evidence
  - Present A Defense
  - Call Witnesses
  - Cannot Demand Trial by Courts-martial unless Restriction contemplated
  - Appeal to the next superior authority
- **Formal Article 15s:** ADDITIONAL RIGHTS AVAILABLE ONLY IN FORMAL ARTICLE 15s (Both Company Grade and Field Grade)
  - Consult With Counsel
  - Have A Spokesperson
  - Ask For An Open Hearing

NJP (Article 15)

The Following DO NOT Have NJP Authority:

- Section chiefs.
- Deputy commanders.
- Platoon leaders.
- First sergeants.

  - These individuals may make recommendations, but they may not demand that the CDR take action, nor may they initiate NJP.

NJP Procedures

- **Summarized Procedures:**
  - Use only if restriction is NOT contemplated*.
  - This is a non-adversarial process but is a hearing before the commander.
  - Imposition of punishment based on finding beyond reasonable doubt that the offense was committed.
  - Termination of the Proceedings: finding that an offense did not occur or that NJP is not necessary.
  - Can be published on unit bulletin board
  - Appeals are to the next Superior Commander.
  - Punishment may not be increased on Appeal by the Superior Commander
  - Filing: OMPF restricted or performance fiche

- **Formal Procedures:** (same procedures as informal)
  - Use if contemplating restriction
  - Soldier has the right to turn down & request CM if contemplating restriction.
  - Can be published on unit bulletin board
  - Appeals are to the next superior commander.
  - Punishment may not be increased on Appeal by the Superior

NJP: Range of Punishments

- Admonition: may be written or verbal.
- Reprimand: more severe than admonition.
- Withholding privileges: up to 6 consecutive months
- Forfeiture of pay: within limits of grade
- Reduction in grade: within limits of grade
- Extra duty: within limits of grade
- Restriction or suspension: Caveat - SM can turn down NJP and demand Courts-Martial.

NJP Punishments

COMPANY COMMANDER	FIELD GRADE	G.O. & OFFICERS in CMD
Admonition	**Admonition**	**Admonition**
Reprimand	**Reprimand**	**Reprimand**
Withholding privileges - 6 mos.	**Withholding privileges - 6 mos.**	**Withholding privileges - 6 mos.**
Forfeiture - 8 days	**Forfeiture - 12 days**	**Forfeiture - 12 days**
Reduction – 1 grade (for enlisted)	**1 to 2 grades[3]** (for enlisted)	**1 to 2 grades[3]*** (for enlisted)
Extra duties - 8 days	**Extra duties - 14 days**	**Extra duties - 14 days ***
Restriction – 8 days	**Restriction – 14 days**	**Restriction – 14 days**

Statutory Limits:

- Commanders have one year to take action
- 45 days to appeal NJP
- 1 training period counts as a "day" for *pay* purposes, so there are typically 4 "days" in a drill weekend.
- Basic pay only: does not include incentive pay, proficiency pay, allowances (If reduced, basic pay is calculated at the reduced rate).

ANG Involuntary Demotions

Rank	Demotion Authority
Traditional Guardsmen E-1 to E-6	TAG (delegate to wing/group/base CDR
Traditional Guardsmen E-7 to E-9	TAG (delegate to Assistant Adjutant for Air
Full-Time AGRs	TAG
Members on AD w/ NGB or ANG Readiness Center	Dir. ANG with TAG concurrence

Rule	If airman is	Then demotion is to grade no lower than
1	E-4 or higher	E-2
2	E-3	E-1

NJP: Actions at Punishment Phase

- Combining Punishment:
  - Multiple punishments run consecutive but cannot exceed the longest available punishment.
  - Generally may not *impose punitive action* for the same offense twice. NJP does not limit imposing additional administrative and leadership measures.
- Mitigating Punishment:
  - CDR may mitigate, reduce, vacate, or suspend punishment, but may not increase punishment after determination.
  - Must be documented.
  - May change a reduction in grade to pay forfeiture.

Non-Judicial Punishment Comparisons

Alabama Code

Punishments may be imposed at Summarized or Formal Proceedings

- *G.O. & Governor
  - Admonition/Reprimand
  - Extra Duty: 14 days
  - Reduction: 1 to 2 grades
  - Forfeiture: 12 days pay
- Field Grade:
  - Admonition/Reprimand
  - Extra Duty: 14 days
  - Reduction: 1 to 2 grades
  - Forfeiture: 12 days pay
- Company Grade:
  - Admonition/Reprimand
  - Extra Duty: 8 days
  - Reduction: 1 grade
  - Forfeiture: 8 days pay

(*Restriction at Formal)

Uniform Code

Punishments are limited at Summarized Proceedings

- Field Grade:
  - Forfeiture ½ of 1 mo. for 2 mo.
  - Reduction E4-1: total, E5-6: 1grade
  - Restriction: 60 days
  - Extra Duty: 45 days
- Company:
  - Forfeiture 7 days pay
  - Reduction 1 grade (E1-4)
  - Restriction 14 days
  - Extra Duty: 14 days
- Summarized:
  - Forfeiture: No
  - Reduction: No
  - Restriction: 14 days
  - Extra Duty: 14 days

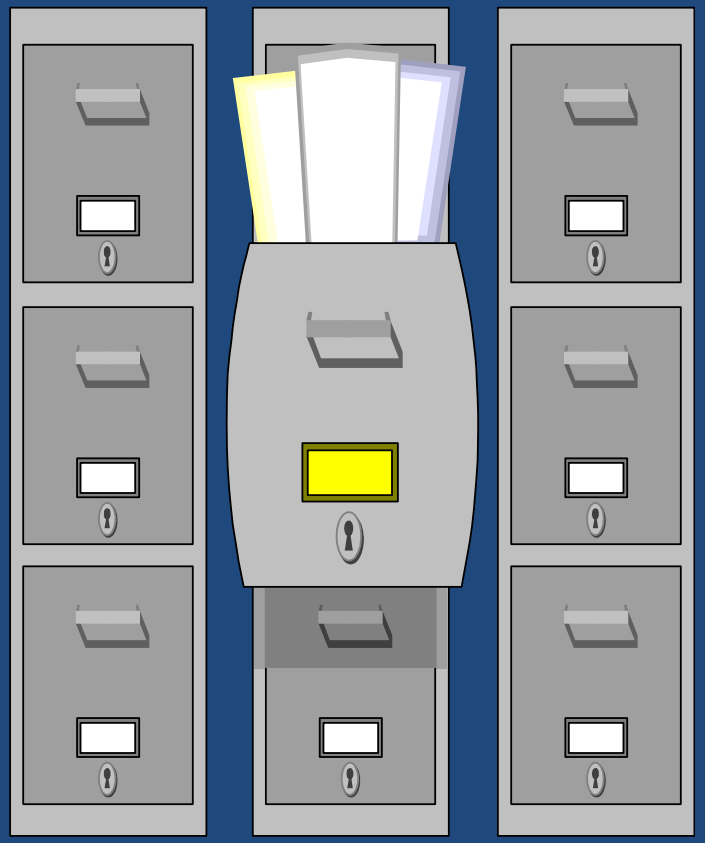
Article 15 Appeals

- **Procedure:**
  - Written Appeal (Some Commanders Permit Personal Appearance)
  - Submitted Through Imposing Commander

- **Appellate Authority:**
  - Next Higher Level Commander

Article 15 Filing

- Summarized:
  - Kept in unit (local) file for two years or transfer
- Formal: Depends upon pay grade of accused
  - E-4 and below: Filed Locally
  - E-5 and above: Filed in OMPF



Procedural Timeline

CRIME IS COMMITTED OR SUSPECTED

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COMMANDER ORDERS AN INVESTIGATION (IF NEEDED) EXISTING VERIFIED INFORMATION MAY BE ENOUGH

(Commander makes determination to use Administrative Actions or Non-judicial punishment or **Courts-Martial** or Not to take Action)

CDR decides to go w/ CM → (Any Action may be combined with Administrative Actions)

↓

COMMANDER PREFERS CHARGES TO THE CONVENING AUTHORITY

↓

CONVENING AUTHORITY ORDERS AN ARTICLE 32 INVESTIGATION

↓

ARTICLE 32 IS CONVENED

↓

ARTICLE 32 REPORT SENT CONVENING AUTHORITY

↓

CONVENING AUTHORITY REFERS CHARGES FOR A COURT MARTIAL

↓

PRETRIAL

↓

COURT MARTIAL

↓

SENTENCING

Alabama Code of Military Justice

Courts-Martial

Courts-Martial (CM)

- Three types of Courts-Martial:
  - General Court-Martial (GCM)* Judge w/5 members
  - Special Court-Martial (SPCM) Judge w/3 members
  - Summary Court-MARTIAL (SCM) 1 Officer (LTC)

Roles and Responsibilities

- **Court-Martial Convening Authorities**
  - **General**: Governor, TAG, any commanding General Officer
  - **Special**: commanding officer of
    - a brigade, regiment (Army)
    - a wing, group (Air Force)
    - commanding officer or officer in charge when empowered by TAG.
  - **Summary**: commanding officer of
    - a battalion (Army)
    - a detached squadron or other detachment (Air Force)

CM Comparison of Punishments

Alabama Code

- GCM Maximum punishment:
  - Any punishment not restricted (i.e., extra duty, withhold privileges, admonition/reprimand)
  - Forfeiture: up to 1 year (total during period of confinement)
  - Reduction to E1
  - Bad Conduct discharge
  - Dismissal (Officers)
  - Confinement: up to 1 yr
- SPCM Maximum punishment:
  - Any punishment not restricted (i.e., extra duty, withhold privileges, admonition/reprimand)
  - Forfeiture: no more than 24 days
  - Reduction: must be w/in promotion authority of CDR imposing reduction:
    - E-1 to E-3, lowest grade
    - E-4 and above, up to 2 grades
  - Restriction/Confinement: no more than 6 mos.
- SCM Maximum punishment:
  - Forfeiture : no more than 15 days of pay
  - Reduction : must be w/in promotion authority of CDR imposing reduction:
    - E-1 to E-3, lowest grade
    - E-4 and above, up to 2 grades

Uniform Code

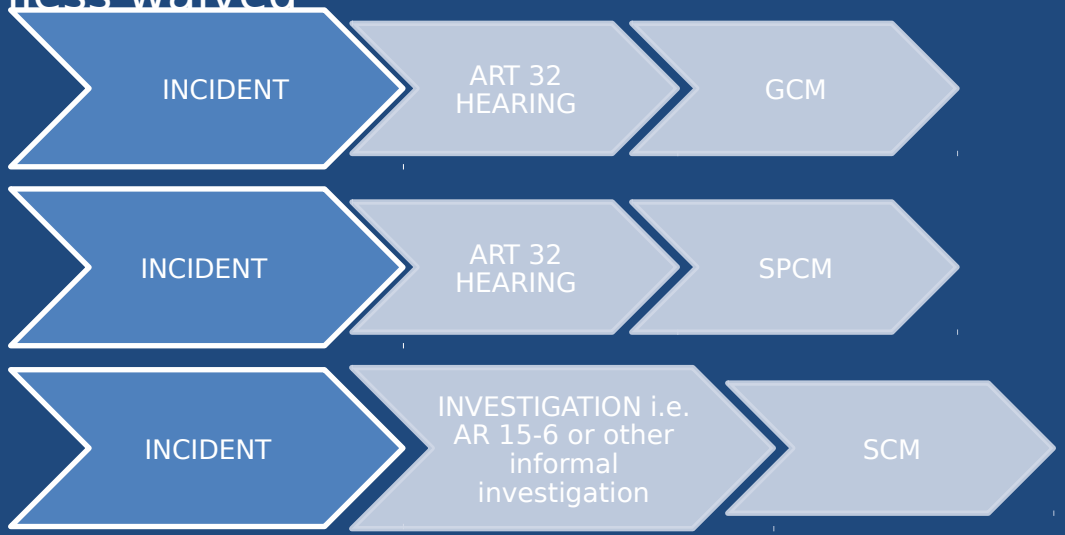
- GCM Maximum punishment
  - Confinement as authorized by law (up to death)
  - Total forfeiture of all pay/allowances
  - Reduction to E1
  - Bad Conduct/Dishonorable Discharge
  - Dismissal (Officers)
- BCD SPCM Maximum punishment
  - 12 months confinement
  - 2/3 forfeiture (pay only) for 12 months
  - Reduction to E1
  - Bad Conduct Discharge
- SPCM Maximum punishment
  - NO punitive discharge
  - 12 months confinement (if Judge present)
  - 2/3 forfeiture (pay only) for 12 months (if Judge present)
  - Reduction to E1
- SCM Maximum punishment
  - Forfeiture of 2/3 of 1 month's pay for 1 month
  - E4 & below: 30 days confinement, reduction to E1
  - E5 & above: 2 months restriction, 1 grade reduction

CM CONVENING AUTHORITY

CONVENING AUTHORTIY	GENERAL	SPECIAL	SUMMARY	ARTICLE 32 HEARING
COMPANY	NO	NO	YES	NO
BRIGADE	NO	YES	YES	YES
GO/GOV*	YES	YES	YES	YES

- Gov, TAG or G.O. Commanding can convene – TAG may reserve this authority.
- ART. 32 Hearing is required for courts-martial unless waived

CM PROCESS



Actions by the Convening Authority

- **The Convening Authority (CA) may**
  - Approve the findings or sentence, in whole or in part
  - Disapprove the findings or a sentence, in whole or in part unless the findings are Not Guilty
  - Remit, commute, or suspend the sentence in whole or in part
  - Order a rehearing on the findings, on the sentence, or on both (except when at trial the evidence is insufficient to support the findings)
  - Dismiss the charges
- **Punishment**
  - The C.A. must take action on the sentence
  - The C.A. may take action on the findings

Appeals

- The Accused must submit:
  - Within 10 days after receiving record of trial
  - For SCM the accused has 7 days after sentencing
- Court-Martial Convening Authority (CMCA) appoints Courts-Martial Military Review Panel
- Court-Martial Military Review Panel
  - Initial appeals are reviewed and ruled upon
- Writ of Cert. to the Alabama Supreme Court
  - If the accused seeks additional review, he must petition for a Writ of Cert. to the Supreme Court

Training Objectives Summary

- Compare ACMJ and UCMJ Justice Systems
- Discuss ACMJ Jurisdiction
- Discuss Administrative Actions
- Discuss Nonjudicial Punishment, Article 15
- Understand Courts-Martial

Alabama Code of Military Justice

QUESTIONS?